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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al., on behalf of themselves and all others similarly situated,

Case No. 3:20-cv-08570-JD

Plaintiffs,

**DEFENDANT META PLATFORMS,
INC.'S NOTICE OF MOTION AND
MOTION TO EXCLUDE EXPERT
TESTIMONY AND OPINIONS OF
NICHOLAS ECONOMIDES**

META PLATFORMS, INC., a Delaware Corporation.

Hearing Date: June 20, 2024
Time: 10:00 a.m.
Judge: Hon. James Donato

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PUBLIC REDACTED VERSION**NOTICE OF MOTION AND MOTION**

1
2 PLEASE TAKE NOTICE that on June 20, 2024, at 10:00 a.m., Defendant Meta Platforms,
3 Inc. will move to exclude opinions of Dr. Nicholas Economides.

4 Pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharm., Inc.*, 509
5 U.S. 579 (1993), Meta requests that the Court exclude the Expert Report of Dr. Nicholas
6 Economides in its entirety; Sections II.A-C, II.D.1-2, II.E, II.G, III.A.1-2.b, and III.B and Parts
7 IV-VII of the Expert Rebuttal Report of Dr. Nicholas Economides; and any testimony drawn from
8 those sections.

MEMORANDUM OF POINTS AND AUTHORITIES**INTRODUCTION**

11 No service that competes for user time and attention with its content has ever paid users
12 for consuming or engaging with that content. No platform that is advertising-supported
13 (newspaper, television, radio, magazine, or website) has paid users for accessing the platform and
14 receiving ads. Despite these real-world facts, Users' putative expert, Nicholas Economides, opines
15 that Meta would have paid all users of Facebook a flat fixed amount of \$5 per month (for a total
16 of \$52.8 billion before trebling) but for securing an alleged monopoly through scattered statements
17 over a twelve-year period about its data practices. Exs. 1-2.¹ Economides's opinions are textbook
18 junk science and should be excluded.

19 Economides's central opinion is that users of the Facebook app would have been
20 compensated "████████" in a but-for world where Meta faced more █████ competition.
21 After submitting hundreds of pages of reports in this case, Economides offers no support for this
22 opinion. No regression analysis, no mathematical formula, and no reliable economic methodology.
23 Instead, the only bases for Economides's opinion are █████
████████ and Meta's payment of participants in certain *market-research programs*

24 that offer no independent value to their (few thousand) participants. He admits that these market-
25 research programs are different in kind from Facebook, even in his but-for world, and that he can
26 _____

27
28 ¹ Unless otherwise noted, "Ex." citations reference exhibits to the Gringer Declaration filed
herewith, emphasis is added, and objections are omitted for deposition citations.

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1 identify no service that has ever paid users for consuming or engaging with content as he speculates
2 would happen in that but-for world.

3 Compounding these errors, Economides offers an opinion that Meta is a monopolist in a
4 contrived “Personal Social Network Market” based on his subjective (and shifting) “[REDACTED]
5 [REDACTED]” He supports this supposed market with an unrecognizable hypothetical
6 monopolist test with no reliable evidence of a change in usage and no price increase at all. He then
7 attributes revenue earned in a separate *advertising* market he did not analyze to the *user* market on
8 which he opines. This opinion too must be excluded.

9 Economides’s competitive effects opinions should also be excluded. Economides says that
10 Meta monopolized PSNS through an alleged campaign of misrepresentations for which he offers
11 no evidence of their effects. In addition to these unreliable opinions, Economides has professed
12 his intent to do what an expert plainly cannot: merely recite evidence into the record. These
13 opinions are unreliable *ipse dixit* and should be excluded.

14 **BACKGROUND**

15 Nicholas Economides is not an expert in ad-supported platforms that compete for user
16 attention with engaging content, such as Facebook, Instagram, YouTube, TikTok, Snapchat,
17 Reddit, or Twitter/X. His unfamiliarity with these apps shows. He testified, “I use Facebook, but
18 I don’t recall all the different features it has.” Ex. 3 at 199:2-5. He “do[es] not use TikTok”, *id.* at
19 200:4-7, but speculates that its “[REDACTED]

20 [REDACTED]” Ex. 4 at 47:6-
21 48:2. On YouTube, he speculates that “[REDACTED]” *Id.* at 47:6-48:2.
22 When asked about [REDACTED]
23 [REDACTED]

24 [REDACTED] *Id.* at 41:6-18.

25 Perhaps recognizing his own lack of familiarity with the services at the heart of the alleged
26 market, Economides asserted, “I don’t believe that I need to use all the services that are available
27 in Facebook and Instagram to be able to opine on the market.” Ex. 3 at 199:6-19. That might be
28 true if Economides had employed an objective methodology to define the market, but that is not

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1 what he did. Instead, he [REDACTED]
 2 [REDACTED] " Ex. 1, ¶28. At class certification, Economides
 3 opined that there were five key PSNS characteristics. Ex. 3 at 202:24-205:10. Four months later,
 4 in his merits report, he pivots to only [REDACTED] two of which appear to be new. Ex. 1, ¶28. When asked
 5 about this change, Economides testified, " [REDACTED]." Ex. 4 at
 6 58:16-59:1. When asked " [REDACTED]
 7 he admitted he [REDACTED] *Id.* at 62:6-22. With no such record,
 8 we are left with only Economides's conclusion that if you accept his say-so on the so-called " [REDACTED]
 9 [REDACTED]" during the class period, this PSNS market includes only Facebook, Instagram,
 10 Snapchat, Google+, and MeWe. Ex. 1, ¶46.

11 Economides has never coherently explained which features of Meta's apps are in his PSNS
 12 market. At times, he has stated that some of the activities on Facebook are not PSNS. *See, e.g.*, Ex.
 13 3 at 231:11-18 ("[Facebook] does face competition ... from some other companies, but outside the
 14 personal social network market."). At other times, he says that [REDACTED]

15 [REDACTED] That includes, for example, [REDACTED]
 16 [REDACTED] *See* Ex. 4 at 76:14-77:9. Yet under
 17 this theory, *every* feature of the firms he excluded, like TikTok and YouTube, is outside PSNS,
 18 even if the same feature is PSNS on Facebook: for instance, if someone posts the same short-form
 19 fishing video on Facebook, Instagram, TikTok, and YouTube, and then another person watches
 20 that same video on all four platforms, " [REDACTED]
 21 [REDACTED]

22 [REDACTED]" *Id.* at 86:25-87:16. Put differently, it's PSNS when Facebook
 23 does it and something else when another platform does.²
 24

25 ² For Users' other economic expert Joseph Farrell, some uses of Facebook are clearly outside the
 26 alleged PSNS market. Ex. 5 at 45:25-46:13 [REDACTED]
 27 [REDACTED]
 28 [REDACTED]).

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1 To support his qualitative position, Economides purports to conduct a hypothetical
 2 monopolist test by way of a “reverse” SSNIP test, also characterized as a “small but significant
 3 decrease in quality” or SSNDQ. Ex. 1, ¶¶132-33, 156. He uses, not changes in the dollar price
 4 charged by firms in the PSNS market (they are all free), but [REDACTED]

5 [REDACTED] He offers no economic analysis
 6 showing that users *responded* to this supposed change in price or quality.

7 Economides opines that Meta maintained a monopoly of this PSNS market due to allegedly
 8 deceptive statements and omissions, but he did not analyze the actual effect of any of them. Ex. 4
 9 at 181:11-16 (“[REDACTED]

10 [REDACTED]
 11 [REDACTED”]). He claims that [REDACTED]
 12 [REDACTED] and—rather than
 13 compete on content and features as in the real world when faced with real competition from TikTok
 14 and others—would have transformed its business model in a never-before-seen way and *paid* each
 15 of its [REDACTED] \$5 per month. Ex. 1, ¶292.

ARGUMENT**I. ECONOMIDES’S OPINIONS ON INJURY AND DAMAGES ARE INADMISSIBLE JUNK SCIENCE**

18 Economides’s opinion that the putative class was injured to the tune of over \$50 billion
 19 because Meta did not pay hundreds of millions of Facebook users each \$5 per month to use its free
 20 service, and his methodology to get there, are largely identical to those offered in the class
 21 certification stage—and inadmissible for the same reasons. *See* Dkt. 651.

A. Economides’s Prediction That Meta Would Compensate Users For Their Data Is Junk Science – Not The Product of Reliable Principles And Methods

24 Economides opines that “[REDACTED]
 25 [REDACTED]
 26 [REDACTED]” Ex. 1, §V.D. But opining on the but-for world is not a license to
 27 dream up a fantasy world. Courts thus exclude opinions where “there is simply too great an
 28 analytical gap between the data and the opinion proffered.” *Gen. Elec. Co. v. Joiner*, 522 U.S. 136,

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1 146 (1997); *McGlinch v. Shell Chem. Co.*, 845 F.2d 802, 807 (9th Cir. 1988) (affirming exclusion
2 of opinion that “rests on unsupported assumptions” and “has scant basis in the record”); *Persian*
3 *Gulf Inc. v. BP W. Coast Prods. LLC*, 632 F. Supp. 3d 1108, 1168 (S.D. Cal. 2022) (excluding
4 opinion lacking “some logical relationship to the evidence in the case”). That is the case here.

5 Economides opines that “[REDACTED]

6 [REDACTED] Ex. 1, ¶210. This claim ignores entry and market participation in his own
7 alleged market. Facebook competes for user time and attention, as Economides concedes. Ex. 4 at
8 20:16-21:2 (“[REDACTED]
9 [REDACTED”]). Facebook and similar platforms do this by providing services that users value, a fact
10 that [REDACTED] and Economides recognize. See Ex. 6 at 294:23-295:5; Ex. 7 at
11 325:5-327:6; Ex. 8 at 53:13-21, 54:4-10, 109:20-110:3; Ex. 3 at 71:9-12. So when Snapchat began
12 capturing attention with a Stories feature, Meta did not respond by offering users \$5 per month to
13 stick with Facebook or Instagram. It instead created its own version of Stories with new and
14 engaging features. When TikTok emerged, Meta did not offer all users \$5 per month to keep using
15 Facebook. It created Reels (and Snap created Spotlights and YouTube created Shorts) to offer their
16 users short-form video. And Snap and TikTok themselves did not compete *with Meta* by offering
17 to pay users of their platforms. Like Meta, they competed by innovating. As Economides admits,
18 [REDACTED] Ex. 4, at 255:12-
19 23 (“[REDACTED”]). Many firms generate content and
20 collect user data on ad conversions. None, including those in the putative PSNS market, pays users
21 for so-called “[REDACTED”]. Courts exclude opinions that lack a basis in reality, *see, e.g., McGlinch*, 845 F.2d at 807, and the Court should do so here.

22 With no real-world support for his conclusions, Economides falls back on evidence that he
23 admits is not a fit. First, Economides relies on inapposite market research programs, including two
24 that Meta has implemented: Study and Research. Unlike the Facebook and Instagram apps, these
25 market research programs do not offer engaging content or provide functionality to allow users to
26 communicate. Instead, they offer compensation to attract (quite limited) participation in market
27 research that obtains “incremental” data that Meta did not otherwise access through the Facebook
28

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1 or Instagram apps. Ex. 9, §X(D)(1). Economides admits that the data Meta collects from Study “is
2 about the use of other apps, not Facebook apps,” including what “other apps that users may have,
3 what features they use, how much time they spend on them, the type of device they’re using and
4 so on.” Ex. 3 at 159:1-11. Research collected similar incremental information. *Id.* at 159:22-160:5.
5 It makes sense then—even to Economides—that Meta paid participants to provide this data,
6 because Meta “by creating these programs, was trying to find extra data that might be useful to it”
7 i.e., data it cannot obtain through Facebook or Instagram and in the research programs. Meta was
8 not providing users with content that they value through market research programs. *Id.* at 160:15-
9 23.

10 These programs, which do not provide value to users and have relatively few participants,
11 say nothing about whether Meta would compensate *all* Facebook users. Each app Economides
12 considered compensates people to participate in studies related to market research (████████).
13 Ex. 1, ¶¶307-327. None of them are ad-supported businesses. None pay people to use a service—
14 or offer them a service at all—or provide independent value such as entertainment or
15 communication. Simply put, none are anything like Facebook, Instagram, or Snapchat. Moreover,
16 these programs sought only select, limited, and representative panels of participants, and so were
17 available to users by invitation only. *See* Exs. 10-11. Economides has acknowledged that he does
18 “not believe these kind[s] of apps need a very large number of participants.” Ex. 3 at 169:19-170:3.
19 So even the market research programs he relies upon are fundamentally different from
20 Economides’s proposed but-for world in ways that preclude their use as reliable benchmarks.

21 Second, Economides considers and relies upon internal Meta proposals about
22 compensating users that the company considered—and *rejected*. Ex. 1, §V(D)(2). As this Court
23 has observed, “just because” Meta considered a proposal does not “mean[] it’s in any way
24 realistic.” June 22, 2023 Hr’g Tr. 22:2-6. Further, the record is clear that whenever ██████████
25 ██████████
26 ██████████
27 ██████████” Ex. 12 at 52:9-23, ██████████
28 ██████████” Ex. 13 at 270:4-272:11. Economides offers

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1 nothing to explain why these proposals would suddenly make sense in the but-for-world. And even
2 if Meta had adopted one of these “[REDACTED]” proposals, Economides points to no record evidence
3 showing that Meta would have paid *all* users a flat monthly rate. *See* Ex. 1, ¶¶237-245. For
4 example, [REDACTED]

5 [REDACTED] *Id.* ¶238.

6 At this point, any sound economic analysis would conclude that Meta would not pay all its
7 users in any realistic world. Economides, however, “[REDACTED]” that Meta would have done so.
8 Ex. 3 at 102:14-20. Users’ other main expert, Joseph Farrell, explains why Economides’s theory
9 makes little sense: paying a “negative price” would lead to people joining Facebook for the cash,
10 not authentic engagement. *See* Ex. 14 at 679 (“At a negative price, people could take [products] at
11 a negative price and use them for landfill.”); Ex. 5 at 272:10-273:8 (“[REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED”]). Economides himself, before he started working on this case,
16 wrote that “[u]sers vary widely on the value they place on privacy and in the value of their personal
17 information to the platform. Therefore, in a competitive market for personal information, some
18 users would participate, and others would not. Transaction prices would also vary and likely be
19 individually negotiated between the platform and the user.” Ex. 15 at 2. Between the cited record
20 evidence and his opinion of universal flat payments lies an “analytical gap” that only grows wider
21 under Users’ experts’ own words. *Joiner*, 522 U.S. at 146.

22 Altogether, Economides’s foundational proposition that Meta would have paid every active
23 Facebook user is classic junk science: a conclusion with no basis in the record or reality. This *ipse*
24 *dixit* opinion divorced from real-world facts is precisely what the *Daubert* standard is designed to
25 weed out. *See Carnegie Mellon Univ. v. Hoffman-LaRoche, Inc.*, 55 F. Supp. 2d 1024, 1034-35
26 (N.D. Cal. 1999) (excluding testimony of expert for “failing to address and exclude alternative
27 explanations for the data,” and “selectively examining only portions of the data”). His “wholly
28 speculative assumptions … make his opinions *ipse dixit* unsuitable for admission at trial” because

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1 “there is simply too great an analytical gap between the data and the opinion offered.” *In re Google*
 2 *Play Antitrust Litig.*, 2023 WL 5532128, *9-10 (N.D. Cal. Aug. 28, 2023).

3 **B. Economides’s Calculation That Meta Would Have Paid Its Active Users \$5
 4 Per Month Is Junk Science And Does Not Reflect Reliable Principles And
 Methods**

5 Economides arrives at the amount users would be paid—\$5 per month, for every active
 6 user—in an equally unreliable way. This time, Economides uses what he calls a “yardstick” study.
 7 It is hornbook law that the “reliability of the yardstick approach is based on the comparability of
 8 that yardstick to the business (or proposed business) involved in the litigation,” *Muffett v. City of*
 9 *Yakima*, 2012 WL 12827492, at *3 (E.D. Wash. July 20, 2012). If “important differences” are
 10 “beyond adjustment,” then the yardstick approach “will have to be abandoned.” Areeda &
 11 Hovenkamp, *Antitrust Law* ¶395b3 (2023). Economides fails this test too. To select yardsticks for
 12 the “market price of data” in the PSNS market, one would expect him to use comparator firms in
 13 his candidate market—Snapchat, Google+, MeWe, or others like TikTok or YouTube. He does
 14 not—because if he did, the price would be zero payment to all or most Facebook users.

15 Instead, Economides asked his staff “to look around for payment for data and find
 16 information, present it to me, and then myself, together with them, decided on these particular
 17 yardsticks.” Ex. 3 at 166:17-22. Unsurprisingly, the external market research programs, just like
 18 Facebook Research and Study, that Economides’s staff turned up bear no resemblance to
 19 Facebook, either in the nature of the value they provide to users or the data they collect. *See supra*
 20 §I.A; Ex. 1, ¶¶306-27. All are available only to limited, select participants—often by invitation
 21 only—and many then close once they reach certain quotas, since further participants’ information
 22 would provide diminishing returns. *See, e.g.*, Ex. 16 (“The Amazon Shopper Panel is an opt-in,
 23 invitation-only program ... Space is limited.”). They have at most thousands, not hundreds of
 24 millions, of participants. *See, e.g.*, Ex. 17 (“Screenwise Panel will consist of 2,500
 25 participants[.]”); Ex. 18 (“AppOptix U.S. observes approximately 4,000 devices annually.”). The
 26 information they collect, often about how people spend time on their devices across all apps, is
 27 much broader than the information Meta can collect on or off its apps. *See, e.g.*, Ex. 4 at 275:7-15
 28

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1 (“[REDACTED]
 2 [REDACTED]”). These
 3 programs offer no user experience or other use at all. They thus need to, and can afford to, pay
 4 select participants.

5 In his merits report, Economides attempts to rehabilitate his methodological failings in two
 6 ways: (1) [REDACTED] and
 7 (2) by naming, after the fact, putative “[REDACTED]” Ex. 1, ¶¶299-305; 330.
 8 Both only highlight his method’s infirmities. Economides concedes [REDACTED]
 9 [REDACTED] Ex. 4 at 273:2-15, making it irrelevant and unhelpful to the jury. And
 10 his retrofitted “[REDACTED]” do not demonstrate reliable scientific methods. The first is
 11 “[REDACTED],” that is firms *not* comparable to Facebook, which of
 12 course does offer engaging content and services to users. Ex. 1, ¶300. The subtext, of course, is
 13 that those who do provide “[REDACTED]” do not need to—and do not—pay their users.

14 Having picked yardsticks using a comparability assessment designed to pick dissimilar
 15 firms, Economides did nothing to adjust for those differences. He looks at market research
 16 programs and derives from them [REDACTED]. That is what he
 17 says Meta would pay people to use Facebook, even though the yardsticks provide *no* [REDACTED]
 18 [REDACTED] and Facebook does. He did not adjust it for the admittedly different “[REDACTED]” those
 19 programs and Facebook collect. Nor did he adjust it for the exponentially more Facebook users.
 20 Or for the value Facebook users get from using the service. He did not make any adjustments to
 21 account for these major differences at all. With “no basis for comparison” between Facebook and
 22 these market-research programs, and without accounting for the “major factors” that could account
 23 for the differences in price, his yardstick analysis is “so incomplete as to be inadmissible as
 24 irrelevant.” *In re Live Concert Antitrust Litig.*, 863 F. Supp. 2d 966, 974-76 (C.D. Cal. 2012).

25 **II. ECONOMIDES’S ATTEMPT TO DEFINE A PSNS MARKET SHOULD BE EXCLUDED**

26 Neither of the means Economides uses to define his artificially narrow PSNS market
 27 reflects a recognized or even remotely reliable methodology. He invented “[REDACTED]
 28 [REDACTED]” of PSNS, but his entirely subjective methodology forecloses the possibility that

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1 “someone else not associated with the case could duplicate it and get the same results.” *United*
 2 *States v. Adams*, 444 F. Supp. 3d 1248, 1260 (D. Or. 2020). And Economides—who has limited
 3 familiarity with the candidate market participants—is not qualified to give this opinion. He then
 4 purported to perform a “reverse” SSNIP/SSNDQ test, but his method of deeming “[REDACTED]
 5 [REDACTED]” a proxy for price and quality is untested, unaccepted, and unreliable; he compounds this
 6 error by misapplying the methodology entirely, measuring changes in the market for *ad revenue*,
 7 not in his candidate market for PSNS users.

8 **A. Economides Uses No Accepted Method To Define His PSNS Market**

9 Economides’s first method for defining his PSNS is subjective and shifting, untested and
 10 untestable. At the outset, Economides is not qualified to identify “[REDACTED]”
 11 Whatever his economics expertise, he has no technical or other expertise in mobile apps. Indeed,
 12 Economides testified he could not recall all the different features of Facebook, had not used
 13 Snapchat extensively and not in months, had not used TikTok at all, and could not identify which
 14 app had which features. Ex. 3 at 198:13-200:7. Economides baselessly testified these platforms
 15 “[REDACTED]”
 16 “[REDACTED]” Ex. 4 at 45:11-46:4, 47:11-48:2, 49:14-50:5. And
 17 shockingly, he testified “[REDACTED]” *Id.* at 39:12-24. His uninformed, inexpert opinions about “[REDACTED]” app features should be excluded.
 18 *See Avila v. Willits Env’t Remediation Tr.*, 633 F.3d 828, 839 (9th Cir. 2011) (excluding opinion
 19 “outside the areas of [expert’s] expertise”).

21 His inexperience shows in the unreliable and unreproducible method he used to arrive at
 22 these characteristics. When asked how someone would replicate his method, he testified, “You
 23 would look at the candidate social networks. You would look at the common features they have.
 24 And then you would expand the set and see, well, here is TikTok. Is it—what features does it have?
 25 And should we put it in the personal social networks or not? This is kind of simple. We’re not
 26 talking about rocket science here.” Ex. 3 at 205:11-23. This “eyeballing” of candidate apps, with
 27 “no documentation of his methods,” “preclude[s] any assessment of the accuracy of his
 28 conclusions.” *Falcon v. State Farm Lloyds*, 2014 WL 2711849, at *67 (W.D. Tex. June 16, 2014).

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1 This unreliable process unsurprisingly yielded inconsistent, unreliable results. Economides
2 opined at class certification that PSNS had five key characteristics—of which “[t]here is no
3 doubt—and we can ask practically any employee of Facebook—that they would say these are key
4 features of Facebook.” Ex. 3 at 202:24-203:12. He cited no record evidence in support. Just four
5 months later, in his merits report, [REDACTED] have changed, and now [REDACTED]
6 [REDACTED] When asked how this change came about, Economides testified, “[REDACTED]
7 [REDACTED]
8 [REDACTED]” Ex. 4 at 58:16-59:1. This fails “*Daubert’s* testability
9 factor,” which requires “that someone else using the same data and methods ... be able to replicate
10 the results.” *Adams v. A/S (In re Incretin-Based Therapies Prods. Liab. Litig.)*, 2022 WL 898595
11 (9th Cir. Mar. 28, 2022). The Court thus has no way to ensure Economides’s “conclusions were
12 not mere subjective beliefs or unsupported speculation.” *Claar v. Burlington N. R.R. Co.*, 29 F.3d
13 499, 502 (9th Cir. 1994).

14 Economides then failed to reliably apply his self-defined criteria to candidate firms. Take
15 [REDACTED] He testified this was a [REDACTED]
16 [REDACTED]. Ex. 4 at 91:13-
17 24. But he nowhere identifies the [REDACTED] under his own
18 standard. *Id.* at 88:19-91:24. And did he analyze whether, say, TikTok had a [REDACTED]
19 [REDACTED] He did not—he [REDACTED] [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] *Id.* at
23 95:25-96:11.

24 His other [REDACTED]
25 [REDACTED]
26 [REDACTED] But he did not [REDACTED]. He
27 did not [REDACTED]
28 [REDACTED] *See id.* at 51:18-53:9; 70:2-23. Neither did he [REDACTED]

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1 [REDACTED] See *id.* at 53:10-54:13; 68:22-69:25. Yet Facebook and Instagram went into the market,
 2 YouTube and TikTok went out. Thus, Economides “impermissibly predetermined” the results by
 3 putting firms in the market until he liked what he saw. *In re Live Concert Antitrust Litig.*, 863 F.
 4 Supp. 2d at 988. His market definition based on these supposed “[REDACTED]” therefore “is
 5 hypothetical and without confirmation through either testing or real-world data,” and it therefore
 6 “lacks the basis in ‘objective, verifiable evidence’ it needs to rise above inadmissible speculation.”
 7 *Sonneveldt v. Mazda Motor of Am., Inc.*, 2023 WL 2292600, at *12 (C.D. Cal. Feb. 23, 2023)
 8 (*citing Domingo v. T.K.*, 289 F.3d 600 (9th Cir. 2002)).

9 **B. Economides’s So-Called “Reverse” SSNIP/SSNDQ Test Is Unsound**

10 Economides seeks to support his unreliable qualitative market definition with an equally
 11 unreliable and unintelligible application of the Hypothetical Monopolist Test, based on what
 12 Economides deems a “reverse” SSNIP/SSNDQ test. To start, Economides claims that the [REDACTED]

13 [REDACTED]
 14 [REDACTED] Ex. 1, at ¶136. But Economides does not and cannot show that this supposed decrease in effective price led to either
 15 higher usage *or* lower revenue in his purported market, rendering his purported test manifestly
 16 unreliable.
 17

18 First, Economides presents no reliable basis to conclude that [REDACTED]
 19 [REDACTED] A reliable HMT assumes that consumers can “respond to a SSNIP” through their
 20 consumption habits. See *Optronic Techs., Inc. v. Ningbo Sunny Elec. Co.*, 20 F.4th 466, 482 n.1
 21 (9th Cir. 2021). [REDACTED] as Economides says, then as this
 22 “price” decreases, users should respond by using Facebook more. See Ex. 4 at 98:12-19. His
 23 hypothesis appears to be that [REDACTED] Ex. 1, ¶136. To confirm
 24 this, it would be relevant to measure whether [REDACTED]

25 [REDACTED] Ex. 4, at 98:20-99:3. Instead, he
 26 [REDACTED] Ex. 1, ¶179. But [REDACTED]
 27 [REDACTED] Economides also does
 28 nothing to show this [REDACTED] is statistically significant, different from prior

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1 years, or even whether it was due to the introduction of popular new features, e.g., Reels. *See Ex.*
 2 ¶179. Failing to show that usage changed [REDACTED] leaves his “SSNIP” without
 3 reliable evidence of how consumers responded—the fundamental thing the HMT is designed to
 4 test. Areeda ¶538 (“The profitability of a hypothetical increase in the price of a hypothetical
 5 monopolist of product *A* depends, of course, on the reactions of customers,” evidenced by
 6 “historical shifts in prices and trading patterns,” “costs … shifting,” or “testimony by customers
 7 or alternative suppliers”).

8 Second, Economides provides no reliable basis to conclude that [REDACTED] shows Meta can
 9 profitably raise prices or decrease quality in his putative PSNS market because he admittedly did
 10 not analyze the advertising market. The *Epic Games* court found an expert’s opinion unreliable for
 11 comparable methodological shortcomings: failing to test all sides of a multi-sided market and
 12 focusing the SSNIP analysis on prices outside the alleged relevant market. *Epic Games, Inc. v.*
 13 *Apple Inc.*, 559 F. Supp. 3d 898, 964 (N.D. Cal. 2021), *rev’d on other grounds*, 67 F.4th 946 (9th
 14 Cir. 2023). Economides relies on ARPU, or average revenue per user, and then declares that [REDACTED]
 15 [REDACTED] Ex. 2, ¶103. But he offers
 16 no reliable way to measure whether there is a linear relationship between [REDACTED]
 17 [REDACTED] Ex. 4 at
 18 114:15-24. He accounts for no confounding factors that would reduce ad revenues, such as changes
 19 in ad quality, ad budgets, or increased competition from TikTok. *Id.* at 112:12-120:22. Without
 20 analyzing the advertiser market, he cannot reliably opine that Meta could profitably raise prices or
 21 reduce quality in the *user* market, making his SSNIP test “wholly unpersuasive of substitution.”
 22 *Epic Games*, 559 F. Supp. 3d at 965; *see also Optronics Techs., Inc.*, 20 F.4th at 482 n.1 (relevant
 23 consideration is whether “consumers would respond to a SSNIP by making purchases outside the
 24 proposed product market definition, *thereby* rendering the SSNIP unprofitable”).

25 Economides’s use of [REDACTED] to show an unprofitable decrease in price or improvement in
 26 quality is not “accepted in a relevant scientific community”—or ever recognized by a court—nor
 27 tested, peer reviewed and published, or with an accepted error rate. *Rodriguez v. Google LLC*,
 28 2024 WL 38302, at *2 (N.D. Cal. Jan. 3, 2024). Courts exclude unreliable supposed applications

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of the HMT that rely on gerrymandered, distorted applications of the SSNIP test. See *Sumotext Corp. v. Zoove, Inc.*, 2020 WL 6544410, at *7-9 (N.D. Cal. Nov. 6, 2020) (supposed “natural SSNIP test” was not “grounded in any accepted methodology for conducting a market analysis”); *Kentucky Speedway, LLC v. Nat’l Ass’n of Stock Car Auto Racing, Inc.*, 588 F.3d 908, 918-19 (6th Cir. 2009) (affirming exclusion of expert’s “own version of the SSNIP test,” “produced solely for this litigation”). The Court should do so here.

III. ECONOMIDES'S COMPETITIVE EFFECTS OPINION IS NOT RELIABLE

Economides opines that Meta’s “campaign” of supposedly deceptive statements and omissions harmed competition—but does so without analyzing the effect of any individual statement or omission, any subset, or all of them. He merely asserts without support that these alleged misrepresentations “[redacted]”

12 [REDACTED]” Ex. 4 at 250:4-25. Every single allegedly deceptive statement or omission has the
13 “[REDACTED] *id.* at 183:19-184:21, regardless of when it was made, where it was
14 made, who made it, the topic it addressed, or its specificity. This includes statements of obvious
15 puffery like “[REDACTED]

16 [REDACTED]
17 [REDACTED] " Ex. 1, Appendix C at 5, 9. All he offers in terms of support are summaries
18 of documents speaking generally about privacy issues and never about any specific deceptive acts.

19 This absence of analysis is a problem even under Economides's own views. In his
20 scholarship, he has acknowledged that “[b]ecause inequality is natural in the market structure of
21 network industries, there should be no presumption that anti-competitive actions are responsible
22 for the creation of market share inequality or very high profitability of a top firm.” Ex. 19 at 15.
23 Economides now betrays his prior work: he presumes that alleged misrepresentations he did not
24 assess excluded Facebook’s competitors and offers zero evidence in support of that conclusion.

These “untested hypotheses” are inadmissible “unsupported speculation.” Sonneveldt, 2023 WL 2292600, at *52; *Daubert*, 509 U.S. at 599; see also *Teradata Corp. v. SAP SE*, 570 F. Supp. 3d 810, 843 (N.D. Cal. 2021). Courts have excluded opinions for not “mak[ing] a reliable analysis as to market impact” of alleged deception because it did not “consider[] any data on the

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1 pricing, sales volume, or market share” of more than two competitors. *Tyr Sport, Inc. v. Warnaco*
 2 *Swimwear, Inc.*, 709 F. Supp. 2d 821, 834 (C.D. Cal. 2010). Economides does even less here. He
 3 “never analyzes the alleged restraints … to determine if they were anticompetitive” and offered
 4 opinions “based only on his speculation that the restraints at issue were ‘anticompetitive.’”
 5 *Craftsmen Limousine Inc., v. Ford Motor Co.*, 2005 WL 3263288, at *7 (W.D. Mo. Dec. 1, 2005)
 6 (excluding opinion). Without such evidence, the alleged conduct and harm “meet only by
 7 assumption.” *UGI Sunbury LLC v. A Permanent Easement for 1.7575 Acres*, 949 F.3d 825, 834
 8 (3d Cir. 2020) (testimony inadmissible where the expert “presented no quantifiable data to explain
 9 or clarify his assumptions” and “no data supporting the application”). Economides’s blanket
 10 assumption of equal competitive harm by all alleged misrepresentations, accounting for no
 11 alternative factors at all, reflects an absence of analysis that the Court should exclude.

12 **IV. ECONOMIDES’S RECITATIONS OF RECORD EVIDENCE SHOULD BE EXCLUDED**

13 Finally, an expert may not merely “restate or summarize record evidence and then state a
 14 conclusion without applying a methodology that is reliable and which evinces his/her expertise.”
 15 *Siqueiros v. Gen. Motors LLC*, 2022 WL 74182, at *9 (N.D. Cal. Jan. 7, 2022); *see also United*
 16 *States v. Fuentes-Cariaga*, 209 F.3d 1140, 1142 (9th Cir. 2000) (“Where an expert offers general
 17 testimony about an issue within the ken of the jury’s knowledge, it is not an abuse of discretion to
 18 exclude such testimony under Rule 702.”). That is all Economides does in significant portions of
 19 his reports. *See, e.g.*, Ex. 1, ¶¶13, 26-123, 166, 168-170, 187, 200-209, 212-224, 227-245, 270,
 20 272, 277-290. That is what he plans to do at trial. On these topics, “[REDACTED]
 21 [REDACTED].” Ex. 4 at
 22 170:20-171:8. Such testimony is “little more than a mouthpiece for presenting the argument of
 23 counsel based on uncomplicated evidence already in the case.” *Waymo LLC v. Uber Techs., Inc.*,
 24 2017 WL 5148390, at *6 (N.D. Cal. Nov. 6, 2017).

25 **CONCLUSION**

26 For these reasons, the Court should exclude Economides’s opinions identified above.
 27
 28

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1 Dated: April 5, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2024, I electronically transmitted the public redacted version of the foregoing document to the Clerk's Office using the CM/ECF System and caused the version of the foregoing document filed under seal to be transmitted to counsel of record by email.

By: /s/ Sonal N. Mehta
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